HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.5 of 2002

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Between:

Gadiraju Narayana Raju and two others.

…Appellants.

And

Joint Collector, Khammam
and another.

….Respondents.

:: J U D G M E N T ::

Counsel for the appellants: Sri Karra Srinivas

Counsel for the respondents: Government Pleader for Assignment

16th March, 2007

Per G.S. SINGHVI, C.J.

Having failed to persuade the learned Single Judge to accept their prayer for quashing order dated 18-12-2000 passed by Joint Collector, Khammam (respondent No.1), the appellants have preferred this appeal under Clause 15 of the Letters Patent.

The appellants are related to each other. Appellant No.3 is the wife of appellant No.1 and appellant No.2 is the son of appellant Nos.1 and 3. Appellant No.1 was a native of West Godavari District till 1979. In 1979-1980, he settled down in Aswaraopet Village of Khammam District and by using his political clout, he could manage to get assignment of Ac.5-00 of land in Survey No.1228 for himself and similar extents of land in the name of his three relatives, namely, Datla Ravi Kumar Varma, Penmathsa Balarama Raju and Gadiraju Ramachandra Raju. Appellant No.1 also occupied land measuring Ac.5-00 abutting to his land, which was assigned to landless poor person.

It is borne out from the record that the lands assigned to Penmathsa Balaram Raju and Gadiraju Ramachandra Raju were re-assigned to one Chaldi Veeraswamy, resident of Bonakal Mandal in the category of freedom fighter. This was done without cancelling the earlier assignment. Shri Chaldi Veeraswamy is said to have sold the land to appellant No.3 vide registered document No.1609 of 1996. Likewise, the lands assigned to appellant No.1 and Datla Ravi Kumar Varma were re-assigned to Chirra Venkaiah (another freedom fighter), resident of Churunomula Village of Bonakal Mandal in the category of freedom fighter albeit without cancelling the earlier assignment. The latter sold the land to appellant No.2 vide registered sale deed dated 24-6-1996.

One Kalidindi Anjaneyulu, resident of Aswaraopet complained to District Collector, Khammam against the assignment of land to appellant No.1 and others, re-assignment of the same in favour of the freedom fighters and sale thereof. In his complaint dated 29-9-2000, Kalidindi Anjaneyulu alleged that appellant No.1, who hails from West Godavari District, has managed assignment of land in his own favour and also in favour of his kith and kin despite the fact that none of them belong to weaker sections of the society. The District Collector directed the Mandal Revenue Officer to enquire into the matter. The latter submitted detailed report with the finding that the assignments made in favour of appellant No.1 and his kith and kin were illegal and that all the transactions had been manipulated by appellant No.1 to grab the government land. Thereafter, the matter was referred to respondent No.1 who issued show cause notice dated 27-10-2000 to the appellants proposing to cancel the assignment. At that stage, appellant No.1 filed Writ Petition No.20450 of 2000 for restraining the respondents from dispossessing him by contending that he was being threatened with forcible eviction. Appellant Nos.2 and 3 also filed Writ Petition No.21525 of 2000 with similar prayer. The second writ petition was disposed of by the learned Single Judge by directing respondent No.1 not to dispossess the petitioners without following the due process of law.

It is also borne out from the record that notices were also issued by respondent No.1 to the so-called freedom fighters, namely, Chaldi Veeraswamy and Chirra Venkaiah. Chaldi Veeraswamy appeared before respondent No.1 on 8-12-2000 and stated that he was not aware of the fact that land measuring Ac.10-00 comprised in Survey No.1228 of Aswaraopet Village was assigned to him and that he had never cultivated the land. He further stated that he was taken to the

office of Sub-Registrar, Sathupalli and made to subscribe his signatures on some document; that he did not know Smt.Gadiraju Rama Sita and that he did not receive any sale consideration. The second freedom fighter Chirra Venkaiah could not be served with notice because, in the meanwhile, he had died.

After conducting a detailed enquiry and giving opportunity of hearing to appellant No.1 and three other assignees, namely, Datla Ravi Kumar Varma, Penmathsa Balarama Raju, Gadiraju Ramachandra Raju, as also the so-called freedom fighters, respondent No.1 passed order dated 18-12-2000 whereby he not only cancelled the assignment and re-assignment of lands in Survey No.1228 of Aswaraopet Village, but also declared that the sale-deeds executed by the so-called freedom fighters would not in any manner affect the right, title or interest of the government in respect of the land in question. Respondent No.1 held that appellant No.1 managed to get the assignment pattas in favour of himself, Datla Ravi Kumar Varma, Penmathsa Balarama Raju and Gadiraju Ramachandra Raju despite the fact that none of them was a resident of Aswaraopet and none of them belong to the weaker sections of the society. Respondent No.1 further held that re-assignment of the land in favour of the so-called freedom fighters and sale thereof was stage managed by appellant No.1 who continued to occupy the entire land and that once the assignment and re-assignment are found to be void, the sale-deeds executed in favour of appellant Nos.2 and 3 would automatically become void and inoperative.

The appellants challenged the aforementioned order of respondent No.1 in Writ Petition No.25975 of 2000 by contending that they had not been given effective opportunity of hearing. They also pleaded that the action taken by respondent No.l under Section 166-

B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli was legally untenable because part of the assigned land was sold by registered sale-deeds and they had developed the same by raising coconut and guava gardens and pattadar pass books had been issued in their favour under the provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971.

In the detailed counter filed by him, respondent No.1 set out the background of the assignments made in favour of appellant No.1 and three of his close kith and kin and averred that the same were manipulated by appellant No.1 for grabbing the government land.

The learned Single Judge adverted to the factual matrix of the case, examined the record and held:

> "The record also would disclose that at no point of time, the so-called freedom fighters were in possession of the land. The entries made in the revenue records do not confirm the possession and enjoyment of the land at any point of time by the so-called freedom fighters. The Joint Collector found that the entire transaction of assignment in favour of the individuals who are none other than the kith and kin of the first petitioner initially and the subsequent re-assignment of the very same land in favour of the so-called freedom fighters and sale in favour of petitioners 2 and 3 by the said two freedom fighters is the result of fraud perpetuated by the first petitioner in collusion with the officials of local administration. The findings do not suffer from any legal infirmity. As rightly observed by the Joint Collector, the entire transaction is confined to paper which is nothing but a sham and nominal one. The first petitioner continued and enjoyed the lands in question at all points of time until the same was taken into possession by the respondents pursuant to the impugned order.
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> In the circumstances, the Joint Collector rightly cancelled the assignment earlier granted in favour of the kith and kin of the petitioners and also cancelled the re-assignment granted on paper in favour of the so-called freedom fighters. The sale deeds executed by the said freedom fighters would in no

manner affect the right, title and interest of the government in the land in question. The transaction of sale would fall to the ground when once the assignment granted in favour of the petitioners vendors is cancelled."

The learned Single Judge then noted that the land meant for landless poor had been grabbed by the appellants by manipulations and held that the action taken by the administration to retrieve the land was justified. The learned Single Judge rejected the plea of violation of the rules of natural justice by observing that non-supply of the report prepared by the Mandal Revenue Officer did not cause any prejudice to the cause of the writ petitioners. For better appreciation of the arguments made by the learned counsel for the appellants, it will be useful to reproduce the extracts of some of the observations made and findings recorded by the learned Single Judge. The same are as under:

> "The laudable object of making the government lands available to the weaker sections of the society and landless poor persons from the local area and to freedom fighters and ex-servicemen got frustrated. The noble policy had become an instrument of appropriation of communities' resources for the benefit of already rich. The nexus between the rich contractors with political clout and the bureaucracy distorts pro-poor and pro-local development measures and reduced them to a farce. The State sponsored egalitarian measures for the betterment of local landless poor are hijacked by the crafty and resourceful individuals. This is not a dramatic new development; it has happened at some level through history. Such machinations push the bulk of people to the brink of disaster. This pernicious tendency of appropriation of resources works itself out by pushing vast masses of local people into accentuated poverty and under development, into subservience resulting in chaos marked by strife. The effort on the part of the district administration to regain the control of the land serves public interest. The administration to that extent

deserves appreciation.

There is absolutely no merit whatsoever in the contention that the first petitioner was a landless poor at the time of original assignment in the year 1982. The scheme evolved by the first petitioner is so glaring even to a naked eye. It is well settled that this Court does not exercise any appellate jurisdiction over the orders passed by the statutory authorities. Suffice it to hold that the decision making process by the Joint Collector is not vitiated for any reason whatsoever. The findings do not suffer from any legal infirmity. The order does not suffer from any error apparent on the face of the record. Any interference by this Court may amount to perpetuating the fraud played by the petitioners.

In the memorandum of grounds in the writ petition, it is, however, stated that the Joint Collector did not make available a copy of the report submitted by the Mandal Revenue Officer. The petitioners, in law, are not entitled for any such preliminary report preceding the show cause notice. The Collector appears to have directed the Mandal Revenue Officer to verify the truth or otherwise of the allegations levelled against the petitioners herein in the petition filed by one Kalidindi Anjaneyulu. In the show cause notice all the relevant facts are revealed, to which petitioners have submitted their explanation. The first petitioner's explanation is totally vague and couched in indefinite terms. The first petitioner merely stated that he was a landless poor person at the time when the land was assigned. At any rate, the petitioners herein never demanded for any copy of the report as such from the Joint Collector. An elaborate enquiry has been held by the Joint Collector in which the petitioners have participated. Non-furnishing of the report has not caused and resulted in any prejudice whatsoever to the case of the petitioners. The Joint Collector rightly reached the conclusions in the matter. The facts on hand lead to only one and irresistible conclusion revealing the fraud perpetuated by the first petitioner to appropriate the valuable government lands admeasuring Ac.20-00 situated in Aswaraopeta village of Khammam District."

Shri Karra Srinivas, learned counsel for the appellants argued that respondent No.1 exercises power of Appellate Authority under the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli and, therefore, he could not have determined the legality of the assignments made in favour of appellant No.1, three others and two freedom fighters. He further argued that the learned Single Judge committed a serious error by upholding the order passed by respondent No.1 ignoring the fact that there was a long time gap of 18 years between the initial assignment of land made in favour of appellant No.1 and more than one decade between the date of purchase by appellant Nos.2 and 3 and cancellation of the assignments. Another contention of the learned counsel is that non-supply of the report of the Mandal Revenue Officer has caused serious prejudice to the defence of the appellants because they did not get opportunity to produce evidence to controvert the findings recorded therein. He submitted that the theory of prejudice could not have been invoked by the learned Single Judge for rejecting the appellants' plea of violation of the rule of audi alteram partem.

Learned Government Pleader supported the order of the learned Single Judge and argued that the Division Bench should not restore the manipulative assignments secured by the appellants in connivance with the lower level officials of the department.

We have thoughtfully considered the entire matter. Adverting to the last argument of the learned counsel, we consider it necessary to observe that in the affidavit filed by him in support of the writ petition, appellant No.2 – Gadiraju Ravi Kumar Varma neither made any grievance about non-supply of the report of enquiry conducted by the Mandal Revenue Officer nor he prayed for issue of a direction to the respondents to furnish the copy of the report. In ground No.3 of his

affidavit, appellant No.2 did state that respondent No.1 failed to supply documents referred to in the proceedings dated 18-12-2000 and the same amounts to denial of reasonable opportunity, but he did not aver that cause/defence of the writ petitioners (appellants herein) had been prejudiced due to non-supply of the documents. Not only this, he did not make a prayer for issue of a direction to the respondents to supply the documents with an opportunity to contradict the same. It is, thus, evident that the appellants had neither pleaded nor produced any evidence before the learned Single Judge to show that their cause had been prejudiced on account of non-furnishing of the enquiry report or the documents mentioned in order dated 18-12-2000. At the hearing of the writ petition also, learned counsel appearing for the appellants did not make a prayer for issue of a direction to the respondents to supply copy of the report submitted by the Mandal Revenue Officer and the documents mentioned in the order passed by respondent No.1 with an opportunity to produce evidence to contradict and controvert the findings of the Mandal Revenue Officer. Therefore, we have no hesitation to hold that the learned Single Judge rightly rejected the appellants' plea of violation of the rules of natural justice by observing that non-furnishing of the report has not prejudiced the cause of the petitioners (the appellants herein).

In early 60's and 70's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the petitioner to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premises that violation of the rules of natural justice is itself a prejudice. This trend has decisively changed in the

recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the petitioner pleads and prima facie shows that his cause has been prejudiced. In this connection, reference can appropriately be made to the judgments of the Supreme Court in **Janki Nath Sarangi Vs. State of Orissa**[1], **R.C.Sharma Vs. Union of India**[2], **Sunil Kumar Banerjee Vs. State of West Bengal**[3], **K.N. Tripathi Vs. State Bank of India**[4], **Mumtaz Hussein Ansari Vs. State of U.P.**[5], **Kashinath Dikshita Vs. Union of India**[6], **Chandrama Tiwari Vs. Union of India**[7], **Managing Director, ECIL Vs. B. Karunakar**[8], **Krishanlal Vs. State of Jammu and Kashmir**[9], **State Bank of Patiala Vs. S.K. Sharma**[10], **S.K. Singh Vs. Central Bank of India**[11], **State of Uttar Pradesh Vs. Shatrughanlal**[12], **Food Corporation of India Vs. Padamkumar Bhuvan**[13], **State of Uttar Pradesh Vs. Harendra Arora**[14], **Oriental Insurance Company Vs. S. Balakrishnan**[15], **State of Uttar Pradesh Vs. Rameshchand Manglik**[16]; **Canara Bank Vs. Debasis Das**[17], **Indra Bhanu Gaur Vs. Committee, Management of M.M Degree College**[18], **Divisional Manager, Plantation Division A and N Islands Vs. Munnu Barrick**[19], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**[20], **Punjab National Bank v. Manjeet Singh**[21], **P.D. Agrawal v. State Bank of India**[22] and Civil

Appeal No.4761 of 2006 – **Ashok Kumar Sonkar v. Union of India** decided on February 23, 2007.

In **B. Karunakar's** case (supra) the Constitution Bench considered the apparent conflict of views expressed by different Benches of the Supreme Court in **Union of India v. Mohd. Ramzan Khan**[23] and **K.C. Asthana v. State of Uttar Pradesh**[24] on the interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The main question considered by the Constitution Bench was whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. Their Lordships of the Supreme Court also considered the following ancillary/incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (supra) will apply to all establishments – Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be

granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report, should come into operation?

(vii) Since the decision in Ramzan Khan's case (supra) has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

After answering the main question in affirmative, the Supreme Court considered the ancillary questions and answered question No.5 in the following words:

> "The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to

rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

The Constitution Bench then held:

“Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.”

I n **Harendra Arora's case** (supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in **B. Karunakar** (supra) and laid down the following propositions:

i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311 (2), non-furnishing of enquiry report would not be fatal to the order of punishment

unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice."

In **Indra Bhanu Gaur v. Committee, Management of M.M.**

Degree College (supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

> "It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings."

In **Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick** (supra) the Supreme Court referred to the judgment of the Constitution Bench in **B. Karunakar**'s case (supra) and observed that the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

In **Karnataka State Road Transport Corporation v. S.G. Kotturappa** (supra), the Supreme Court held:

> "The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be

put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given"

In **Punjab National Bank v. Manjeet Singh** (supra), the Supreme Court opined as under:

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principle of natural justice."

In **P.D. Agarwal v. State Bank of India** (supra), the Supreme Court held that the principles of natural justice cannot be put in a straight jacket formula and then observed:

"Decision of this Court in **S.L. Kapoor vs. Jagmohan & Ors. [(1980) 4 SCC 379]**, whereupon Mr. Rao placed strong reliance to contend that non- observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364]** and **Rajendra Singh vs.**

State of M.P. [(1996) 5 SCC 460], the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

In **Ashok Kumar Sonkar v. Union of India** (supra), the Supreme Court held that cancellation of the appellant's appointment on the post of Lecturer in Tridosa Vigyan, IMS, Banaras Hindu University cannot be invalidated on the ground of violation of the rules of natural justice because he did not possess the essential qualifications for appointment on the post and even if notice was given to him, he could not have convinced the competent authority that he was eligible to be appointed as Lecturer in the subject of Tridosa Vigyan. Their lordships of the Supreme Court referred to various judicial pronouncements on the subject and observed:

> "A court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard."

In view of the above discussion, we hold that order dated 18-12-2000 passed by respondent No.1 cannot be declared as vitiated due

to violation of the rules of natural justice and the learned Single Judge did not commit any error by declining the appellant's prayer.

The argument of the learned counsel that respondent No.1 did not have the jurisdiction to cancel the assignments because he exercises the power of the Appellate Authority is liable to be rejected because neither any such plea was raised in the affidavit filed in support of the writ petition nor any such argument was advanced before the learned Single Judge. In our opinion, by having refrained from questioning the jurisdiction of respondent No.1 to pass the order impugned in the writ petition, the appellants will be deemed to have waived their right to do so and they cannot be allowed to raise this plea for the first time at the hearing of the appeal moreso because no such ground has been set out in the Memo of Appeal.

No other point has been argued.

In the result, the appeal is dismissed. We would have saddled the appellants with costs, but refrain from doing so because the departmental authorities have not bothered to instruct the learned Government Pleader on the issue of fixing the accountability of the officers and officials who were parties to the fraud enacted by the appellants.

As a sequel to dismissal of the appeal, WAMP No.9 of 2002 filed by the appellants for interim relief is dismissed and interim order dated 27-2-2002 is vacated.

G.S.SINGHVI, C.J.

March 16, 2007

C.V.NAGARJUNA REDDY, J.

Note:

Registry is requested to mark L.R.copy.
(By order)
svs

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[1] (1969) 3 SCC 392
[2] (1976) 3 SCC 574
[3] (1980) 3 SCC 304
[4] (1984) 1 SCC 43
[5] (1984) 3 SCC 295
[6] (1986) 3 SCC 229
[7] (1987) Suppl. SCC 518
[8] (1993) 4 SCC 727
[9] (1994) 4 SCC 422
[10] (1996) 3 SCC 364
[11] (1996) 6 SCC 415
[12] (1998) 6 SCC 651
[13] (1999) SCC (L&S) 620
[14] (2001) 6 SCC 392
[15] (2003) 11 SCC 734
[16] (2003) 3 SCC 443
[17] (2003) 4 SCC 557
[18] (2004) 1 SCC 281
[19] (2005) 2 SCC 237
[20] (2005) 3 SCC 409
[21] (2006) 8 SCC 647
[22] (2006) 8 SCC 776
[23] (1991) 1 SCC 588
[24] (1988) 3 SCC 600